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**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>BILLIE R. RIGGS, Deceased</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 239,099
<b>CRIST FEED YARD, INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>CRUM &amp; FORSTER INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent appeals from an Award entered by Administrative Law Judge Pamela J. Fuller on February 16, 2000. The Appeals Board heard oral argument July 6, 2000.

**APPEARANCES**

Jim D. Mills of Garden City, Kansas, appeared on behalf of claimant. Christopher J. McCurdy of Wichita, Kansas, appeared on behalf of respondent and its insurance carrier.

**RECORD AND STIPULATIONS**

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

**ISSUES**

Billie Riggs, assistant manager of respondent's outside feed operations, was killed in an automobile accident while driving himself and one of the employees he supervised to work. The ALJ granted benefits and, on appeal, respondent contends the death did not arise out of or in the course of employment.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments, the Appeals Board concludes the Award should be affirmed.

### Findings of Fact

1. Riggs worked as assistant manager for respondent's feed yard operations approximately 11 miles south and 1 mile west of Scott City, Kansas. He was responsible for all outside operations of the feed yard, including feeding and care of the cattle as well as hiring and firing employees who worked outside at the feed lot. Riggs was paid a salary plus 50 cents for each cow that left the feed yard alive, as well as other benefits. The benefits included a pickup Riggs used at the feed lot. Riggs was also allowed personal use of the vehicle. He drove the vehicle to and from work. Riggs was subject to call 24 hours per day but another employee who lived at the feed yard took care of many of the matters that might arise at night.

2. On the morning of July 4, 1998, Riggs was killed in an automobile accident. Riggs had picked up Tony Turley, one of the employees he supervised, and was driving to respondent's feed yard at the time of the accident.

3. Tony Turley, the passenger in the truck, was a college student working for respondent during the summer. Joyce Riggs, wife of the deceased Billie Riggs, was present at the time Tony Turley came to their home to ask for summer work. As part of the discussion at the time Turley was hired, Billie Riggs agreed to drive Turley to and from work. In order to do so, Riggs drove approximately one mile north to pick up Turley and then back by the Riggs' home on the way to the job site. Tyrone Rumford, who was respondent's general manager at the time of the accident, was aware Riggs had agreed to bring Turley to work.

4. Riggs had, from time to time, brought other employees to work, including Steven Turley (brother of the deceased Tony Turley), Kevin Buffington, and Cheyenne Rose. All testified they felt they had begun working once Riggs picked them up. According to all three, the ride was spent talking about what they would be doing at work. This testimony is, in a general sense, supported by evidence that claimant devoted a great deal of his time and energy to the work for respondent. The evidence shows that claimant worked long hours and had not taken a vacation in years.

For one of these employees, Cheyenne Rose, respondent's then manager Jerry Kuckelman had asked Riggs to drive the employee to work because Rose had difficulty getting to work on time. In some cases the evidence shows Riggs drove the employee to work so that he would have help with early morning doctoring of the cattle. The record shows respondent was aware Riggs drove the employees to work.

5. The Board also adopts the findings stated in the Award by the ALJ to the extent they are not inconsistent with the above specific findings.

### Conclusions of Law

The Board concludes Riggs' accident, injury, and death arose out of and in the course of his employment. Arising "out of" and "in the course of" have separate meanings and both must exist before compensation is allowed. *Hormann v. New Hampshire Ins. Co.*, 236 Kan. 190, 689 P.2d 837 (1984). The phrase "out of" requires a causal connection between the injury and the employment. *Newman v. Bennett*, 212 Kan. 562, 512 P.2d 497 (1973). The phrase "in the course of" refers to time and place and requires that the injury occur while employment was in progress. *Bailey v. Mosby Hotel Co.*, 160 Kan. 258, 160 P.2d 701 (1945).

Accidental injury while going to and coming from work is considered to arise out of or in the course of employment only if the circumstances fit one of several exceptions. K.S.A. 1998 Supp. 44-508(f). In some cases, the travel is considered to be an integral part of the employment and injury while traveling is compensable on that basis. *Messenger v. Sage Drilling Co.*, 9 Kan. App. 2d 435, 680 P.2d 556, *rev. denied* 235 Kan. 1042 (1984). The Board considers this to be such a case. Transporting other employees to and from work had become, by custom and practice, a part of the services Riggs provided for respondent and respondent's employees. In some cases he did so to assure he would have help with the early morning work, in one case he did so to assure the employee was at work on time, and with Tony Turley this was part of the arrangement at the time Turley was hired. The employees discussed work on the ride and considered themselves to be on the job once Riggs picked them up. Riggs drove them in a vehicle provided by respondent.

In *Hanson v. Zollars*, 189 Kan. 699, 371 P.2d 357 (1962), a civil claim was considered barred by the exclusive remedy doctrine applicable for injuries covered by the workers compensation act. In that case, Hanson was injured in an accident that occurred as he was riding as a passenger in a company-provided pickup. The pickup was being driven by his brother-in-law, the company foreman for a construction job, and the two were traveling from their home in a suburb of Kansas City to the job site in Lawrence. Although the accident was treated as compensable under the workers compensation act, the case contains no analysis of this issue. The Board notes that the distance of the travel, from one city to another, may have been a significant factor. Distance is often a significant factor in making travel an integral part of the employment. *Larson's Workers' Compensation Law*, Sec. 14.07[1]. But in other respects, the facts are similar to those here. And in this case we have additional factors favoring compensability. Here, Riggs agreed to drive Turley to and from work at the time he hired Turley. Here, the uncontradicted evidence indicates the trip was used to discuss the day's work. In the Board's view, the transporting of the employees was being done as part of doing his job for respondent with the respondent's knowledge and implied consent.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Pamela J. Fuller on February 16, 2000, should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 2000.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Jim D. Mills, Garden City, KS  
Christopher J. McCurdy, Wichita, KS  
Pamela J. Fuller, Administrative Law Judge  
Philip S. Harness, Director